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AMENDED IN ASSEMBLY APRIL 6, 1999
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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 387

Introduced by Assembly Members Wildman
(Coauthors: Assembly Members Alquist, Calderon, Jackson,
Knox, Romero, Strom-Martin, and Washington)
(Coauthor: Senator Solis)

February 11, 1999

An act to amend Sections 17213 and 17268 of, and to add Section 17072.13 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 387, as amended, Wildman. School facilities construction: site contamination.

(1) Under existing law, the Leroy F. Greene School Facilities Act of 1998 (hereafter the Greene Act), the State Allocation Board is authorized to apportion per-pupil state funding to applicant school districts for designated school facilities, including site acquisition assistance.

This bill would authorize the board to also provide funding for *50% of the cost of* the evaluation of hazardous or solid waste or hazardous substances at a site to be acquired by a school district, for its removal, and for other remedial action *pursuant to a formula*.

(2) Existing law prohibits a governing board of a school district from approving a project involving the acquisition of a current or former hazardous waste site as a schoolsite unless the lead agency, as defined, determines that the property purchased or to be built upon is not (a) the site of a current or former hazardous waste disposal site or solid waste disposal site unless, if a solid waste disposal site, the governing board of the school district concludes that the wastes have been removed, (b) a hazardous substance release site, or (c) a site that contains a pipeline that carries specified substances.

Existing law prohibits the approval of an environmental impact report or negative declaration for the purchase of a schoolsite or construction of a new elementary or secondary school, unless the environmental impact report or negative declaration contain specified information and the governing board of the school district makes those findings.

This bill would revise those prohibitions to require the State Department of Education, in consultation with the Department of Toxic Substances Control, to conclude that the wastes have been removed from a former solid waste disposal site or a hazardous waste disposal site.

The bill would additionally prohibit the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a new elementary or secondary school if it is determined that the property purchased or to be built upon is a site where there is a release of any hazardous substance, hazardous waste, or hazardous material.

The bill would require a school district, if it is considering acquiring a site, owns a site, or proposes to construct a new elementary or secondary school on a site that meets any of those prohibited conditions, to prepare a preliminary endangerment assessment and to submit the assessment to the Department of Toxic Substances Control, for a determination of whether further removal or remedial action is necessary. If the department makes such a determination, the school district would be required to take those actions required by the department. The bill would allow the governing board of the school district to approve the site acquisition or development of the site only if a final remedial



action plan or removal action workplan is approved by the department and the site is enrolled in a voluntary cleanup program.

The bill would also prohibit the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a new elementary or secondary school unless the lead agency for the project consults with the local planning department having jurisdiction in the area in which the site is located to review the surrounding land uses. The bill would make conforming changes.

To the extent this bill would require a school district to perform new or additional duties regarding the acquisition a schoolsite or the construction of an elementary or secondary school, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17072.13 is added to the
2 Education Code, to read:
3 17072.13. In addition to the amounts provided
4 pursuant to Sections 17072.10 and 17072.12, the board may
5 provide funding for *50 percent of the cost of* the
6 evaluation of hazardous waste, solid waste, or hazardous
7 substances at a site to be acquired by a school district and
8 for *50 percent of the cost of* the removal of hazardous

1 waste or solid waste, the removal of hazardous substances,
2 or other remedial action in connection with hazardous
3 substances at that site. *The funding provided pursuant to*
4 *this section may not exceed 50 percent of a number*
5 *calculated by subtracting the school district's cost of the*
6 *site from what the appraised value of the site would be*
7 *after the remediation or removal action is completed.*

8 SEC. 2. Section 17213 of the Education Code is
9 amended to read:

10 17213. The governing board of a school district shall
11 not approve a project involving the acquisition of a
12 schoolsite by a school district unless all of the following
13 occur:

14 (a) Except as provided in subdivision (b), the lead
15 agency, as defined in Section 21067 of the Public
16 Resources Code, determines that the property purchased
17 or to be built upon is not any of the following:

18 (1) The site of a current or former hazardous waste
19 disposal site or solid waste disposal site unless the State
20 Department of Education, in consultation with the
21 Department of Toxic Substances Control, concludes that
22 the wastes have been removed.

23 (2) A hazardous substance release site identified by
24 the Department of Toxic Substances Control in a list that
25 was in effect on December 31, 1998, and adopted
26 pursuant to Chapter 6.8 (commencing with Section
27 25300) of Division 20 of the Health and Safety Code for
28 removal or remedial action pursuant to that chapter.

29 (3) A site that contains one or more pipelines, situated
30 underground or aboveground, that carry a hazardous
31 substance, regulated substance, or hazardous waste,
32 unless the pipeline is a natural gasline that is used only to
33 supply natural gas to that school or neighborhood.

34 (4) A site where there is any release of any hazardous
35 substance, hazardous waste, or hazardous material.

36 (b) (1) If a school district is considering acquiring a
37 site or owns a site that meets one of the descriptions listed
38 in paragraphs (1) to (4), inclusive, of subdivision (a), the
39 district shall prepare a preliminary endangerment
40 assessment regarding the site and shall submit the

1 preliminary endangerment assessment to the
2 Department of Toxic Substances Control for review.

3 (2) Upon review by the Department of Toxic
4 Substances Control of the preliminary endangerment
5 assessment, it shall determine if further removal or
6 remedial action is required at the site. If the department
7 determines that further removal or remedial action is
8 necessary, the school district shall take any action
9 required by the department, including entering into an
10 enforceable agreement with the department to assess the
11 scope of work needed to remove or remediate the
12 danger, to review any pertinent documents, and to pay
13 the department for all of the costs included by the
14 department in carrying out its responsibilities pursuant to
15 this section.

16 (3) The Department of Toxic Substances Control may
17 designate another state or local agency to review the
18 preliminary endangerment assessment and any related
19 documents pursuant to this subdivision.

20 (4) The governing board of the school district may
21 approve the acquisition of a site subject to this
22 subdivision, after completion of the actions specified in
23 paragraphs (2) and (3), only if a final remedial action
24 plan or removal action workplan is approved by the
25 Department of Toxic Substances Control and the site is
26 enrolled in a voluntary cleanup program.

27 (c) The lead agency, as defined in Section 21067 of the
28 Public Resources Code, preparing the environmental
29 impact report or negative declaration has consulted with
30 the administering agency in which the proposed
31 schoolsite is located and with any air pollution control
32 district or air quality management district having
33 jurisdiction in the area, to identify facilities within
34 one-fourth mile of the proposed schoolsite that might
35 reasonably be anticipated to emit hazardous air
36 emissions, or to handle hazardous substances, regulated
37 materials, or hazardous waste. The lead agency shall
38 include a list of the locations for which information is
39 sought.

1 (d) The lead agency, as defined in Section 21067 of the
2 Public Resources Code, consults with the local planning
3 department having jurisdiction in the area in which the
4 site is located to review the approved local land use plan
5 and any variances granted to ensure that no land use
6 within one-fourth mile of the site poses a potential public
7 health or environmental threat to any occupant of the
8 school.

9 (e) The governing board of the school district makes
10 one of the following written findings:

11 (1) Consultation identified none of the facilities
12 specified in subdivision (c) and that no land use within
13 one-fourth mile of the site poses a potential health or
14 environmental threat to any occupant of the school.

15 (2) The facilities specified in subdivision (c) exist, but
16 one of the following conditions applies:

17 (A) The health risks from the facilities do not and will
18 not constitute an actual or potential endangerment of
19 public health to persons who would attend or be
20 employed at the school, as determined by the
21 Department of Toxic Substances Control or its designee
22 in its review of the documentation provided pursuant to
23 subdivision (b).

24 (B) The governing board finds that corrective
25 measures required under an existing order by another
26 jurisdiction that has jurisdiction over the facilities will,
27 before the school is occupied, result in the mitigation of
28 all chronic or accidental hazardous air emissions to levels
29 that do not constitute an actual or potential
30 endangerment of public health to persons who would
31 attend or be employed at the proposed school. If the
32 governing board makes this finding, the governing board
33 shall also make a subsequent finding, prior to the
34 occupancy of the school, that the emissions have been
35 mitigated to these levels.

36 (f) As used in this section:

37 (1) "Administering agency" means the local agency
38 authorized by Section 25502 of the Health and Safety
39 Code.

(2) “Handle” has the same meaning as defined in Section 25501 of the Health and Safety Code.

(3) “Hazardous air emissions” means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(4) “Hazardous material” means any material, as defined by Section 25260 of the Health and Safety Code.

(5) “Hazardous substance” means any substance, as defined by Section 25316 of the Health and Safety Code.

(6) “Hazardous waste” means any hazardous waste, as defined by Section 25117 of the Health and Safety Code.

(7) “Hazardous waste disposal site” means any site defined by Section 25114 of the Health and Safety Code.

(8) “Operation and maintenance” means activities described in subdivision (a) of Section 25318.5 of the Health and Safety Code.

(9) “Preliminary endangerment assessment” means an activity that is performed to determine whether past or current hazardous substance, hazardous waste, or hazardous material management practices have resulted in a release that may pose a threat to public health or the environment.

(10) “Regulated substances” means a regulated substance, as defined pursuant to subdivision (g) of Section 25532 of the Health and Safety Code.

(11) “Remedial action” means the actions described in Section 25322 of the Health and Safety Code.

(12) “Removal action plan” means a plan to accomplish a removal, as defined in subdivision (a) of Section 25323 of the Health and Safety Code.

(13) “Removal action workplan” means a workplan described in Section 25323.1 of the Health and Safety Code.

1 SEC. 3. Section 17268 of the Education Code is
2 amended to read:

3 17268. (a) The governing board of a school district
4 shall not approve a project for the construction of a new
5 school building, as defined in Section 17283, unless the
6 project and its lead agency comply with the same
7 requirements specified in Section 17213 for schoolsite
8 acquisition.

9 (b) For purposes of this section, the acceptance of
10 construction bids shall constitute approval of the project.

11 SEC. 4. Notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains costs mandated by the
14 state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund.

